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Including Notes to the Georgia Reports
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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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TITLE 52

WATERS OF THE STATE, PORTS, AND WATERCRAFT

Chap.

1. General Provisions, 52-1-1 through 52-1-39.
7. Registration, Operation, and Sale of Watercraft, 52-7-1 through 52-7-77.

CHAPTER 1

GENERAL PROVISIONS

Article 1

Protection of Tidewaters

Sec.
52-1-3. Definitions.

Article 2

Right of Passage

Sec.
52-1-32. Definitions.

ARTICLE 1

PROTECTION OF TIDEWATERS

52-1-3. Definitions.

As used in this article, the term:

- (1) "Board" means the Board of Natural Resources.
- (2) "Commissioner" means the commissioner of natural resources.

(3) "Structure" means any structure located upon any tidewaters of this state, whether such structure is floating upon such tidewaters and is made fast by the use of lines, cables, anchors, or pilings, or any combination thereof, or is built upon pilings embedded in the beds of such tidewaters when such structure is being or has been used or is capable of being used as a place of habitation, dwelling, sojournment, or residence for any length of time; is not being used or is not capable of being used as a means of transportation upon such tidewaters; and is not owned, occupied, or possessed pursuant to a permit issued by the commissioner pursuant to Code Section 52-1-10. Such structures may include, but are not limited to, vessels not being used in navigation; provided, however, that structures do not include live-aboards, as defined in Code Section 12-5-282. Structures shall also not include fishing camps, bait shops, restaurants, or other

commercial establishments permitted under Part 4 of Article 4 of Chapter 5 of Title 12, the “Coastal Marshlands Protection Act of 1970,” as amended, which do not discharge sewage into the waters of the state and are operated in conformance with the zoning ordinances, if any, of the municipality or county in which they are located.

(4) “Tidewaters” means the sea and all rivers and arms of the sea that are affected by the tide, where the tide rises and falls, which are capable of use for fishing, passage, navigation, commerce, or transportation, and which are located within the jurisdiction of the State of Georgia. (Code 1981, § 52-1-3, enacted by Ga. L. 1992, p. 2317, § 1; Ga. L. 1993, p. 91, § 52; Ga. L. 2012, p. 1074, § 4/SB 319.)

The 2012 amendment, effective July 1, 2012, substituted “live-aboards, as defined in Code Section 12-5-282” for “vessels which are capable of navigation and are tied up at marinas” in the second sentence of paragraph (3).

ARTICLE 2

RIGHT OF PASSAGE

52-1-32. Definitions.

As used in this article, the term:

- (1) “Board” means the Board of Natural Resources.
- (2) “Commissioner” means the commissioner of natural resources.

(3) “Navigable stream or river” means a stream or river which is capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year.

(4) “Structure” means any structure located upon any navigable stream or river of this state, whether such structure is floating upon such navigable stream or river and is made fast by the use of lines, cables, anchors, or pilings, or any combination thereof, or is built upon pilings embedded in the beds of such navigable stream or river when such structure is being, has been, or is capable of being used as a place of habitation, dwelling, sojournment, or residence for any length of time; is not being used or is not capable of being used as a means of transportation upon such navigable stream or river; and is not owned, occupied, or possessed pursuant to a permit issued by the commissioner pursuant to Code Section 52-1-39. Such structures may include, but are not limited to, vessels not being used in navigation; provided, however, that structures do not include live-aboards, as defined in Code Section 12-5-282. Structures shall also not include fishing camps, bait shops, restaurants, or other commercial establishments permitted under Part 4 of Article 4 of Chapter 5 of Title 12,

the “Coastal Marshlands Protection Act of 1970,” as amended, which do not discharge sewage into the waters of the state and are operated in conformance with the zoning ordinances, if any, of the municipality or county in which they are located. (Code 1981, § 52-1-32, enacted by Ga. L. 1992, p. 2317, § 1; Ga. L. 1993, p. 91, § 52; Ga. L. 2012, p. 1074, § 5/SB 319.)

The 2012 amendment, effective July 1, 2012, substituted “live-aboards, as defined in Code Section 12-5-282” for “vessels which are capable of navigation and are tied up at marinas” in the second sentence of paragraph (4).

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PILOTS AND PILOTAGE

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BOARD OF PILOTAGE COMMISSIONERS

52-6-8. (Effective January 1, 2013. See note.) Keeping of records by board; designation of chairperson of board; keeping list of pilots whose licenses have been revoked; access of public to records.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

CHAPTER 7

REGISTRATION, OPERATION, AND SALE OF WATERCRAFT

Article 1

General Provisions

Sec.
52-7-8. Classification of vessels; required equipment.
52-7-26. Penalty.

Article 2

Displaying of Watercraft Information

Sec.
52-7-51. Penalty.

ARTICLE 1
GENERAL PROVISIONS

52-7-8. Classification of vessels; required equipment.

(a) **Classification.** Vessels subject to the provisions of this article shall be divided into four classes as follows:

- (1) Class A Less than 16 feet in length
- (2) Class 1 16 feet or over and less than 26 feet in length
- (3) Class 2 26 feet or over and less than 40 feet in length
- (4) Class 3 40 feet or more in length

(b) **Lights.** Every vessel in all weathers from sunset to sunrise shall carry and exhibit lights as provided by regulations of the board.

(c) **Whistle or horn.** Every vessel of Class 2 or 3 shall be provided with an efficient whistle or horn or other sound-producing mechanical appliance capable of producing signals required by the rules for the prevention of collision enacted by Congress.

(d) **Lifesaving devices.**

(1) Every vessel shall be equipped with and carry aboard, at all times, at least one Type I, II, III, or V (hybrid) personal flotation device for each person on board; provided, however, Type V (hybrid) devices are acceptable only when worn and securely fastened. In addition to the individual personal flotation device, each vessel 16 feet or more in length, except for canoes and kayaks, must at all times be equipped with at least one Type IV (throwable) device.

(2) No person may use a vessel upon the waters of this state unless the personal flotation devices as required in paragraph (1) of this subsection are readily accessible to the occupants of the vessel, are in good and serviceable condition, are legibly marked with the United States Coast Guard approved number, and are of an appropriate size for the occupants of the vessel for whom they are intended; provided, however, that provisions of this subsection shall not apply to racing sculls, racing shells, and racing sweeps.

(3) No person shall operate a moving vessel upon the waters of this state with a child under age ten on board such vessel unless the child is wearing an appropriately sized personal flotation device, as required by this subsection to be on board the vessel. This requirement

shall not apply when the child is within a fully enclosed roofed cabin or other fully enclosed roofed compartment or structure on the vessel.

(e) Fire extinguishers.

(1) Every mechanically propelled Class A and Class 1 vessel, constructed so as to have enclosed areas which permit entrapment of gases or vapors, shall carry aboard one Type B-I United States Coast Guard approved hand portable fire extinguisher unless there is a United States Coast Guard approved fixed fire-extinguishing system installed in the machinery space. When such a fixed fire-extinguishing system is installed in the machinery space, no hand portable fire extinguisher will be required.

(2) Every mechanically propelled Class 2 vessel, regardless of construction, shall carry aboard two Type B-I or one Type B-II United States Coast Guard approved hand portable fire extinguisher. When a United States Coast Guard approved fixed fire-extinguishing system is installed in the machinery space, one less Type B-I hand portable fire extinguisher is required.

(3) Every mechanically propelled Class 3 vessel, regardless of construction, shall carry aboard three Type B-I or one Type B-I and one Type B-II United States Coast Guard approved hand portable fire extinguisher. When a United States Coast Guard approved fixed fire-extinguishing system is installed in the machinery space, one less Type B-I hand portable fire extinguisher is required.

(4) The carriage of any dry stored pressure fire extinguishers not fitted with pressure gauges or indicating devices or any vaporizing liquid fire extinguishers containing carbon tetrachloride, chlorobomethane, or any other toxic vaporizing liquids is prohibited.

(5) The carriage of any United States Coast Guard approved hand portable fire extinguisher or any fixed fire extinguishing system which is not fully charged shall be prohibited.

(f) Equipment exemptions in authorized races. Subsections (c) and (e) of this Code section shall not apply to vessels while competing in any race conducted pursuant to Code Section 52-7-19 or, if such vessels are designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(g) Flame arrester for carburetor. Every vessel shall have the carburetor or carburetors of every engine therein, except outboard motors using gasoline as fuel, equipped with an efficient United States Coast Guard approved flame arrester, backfire trap, or other similar device.

(h) **Ventilation.** Every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with means for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or flammable gases.

(i) **Rules and regulations.** No person shall operate or give permission for the operation of a vessel which is not equipped as required by this article or the rules and regulations of the department made pursuant thereto.

(j) **Sale of personal flotation devices.** It shall be unlawful for any person to sell or offer for sale within this state any personal flotation device which is not United States Coast Guard approved unless such device is clearly marked as follows: "Notice: This personal flotation device is not United States Coast Guard approved."

(k) **Definition.** As used in this Code section, the words "personal flotation device" shall not include flotation devices such as plastic toys, rafts, and other devices used for recreational purposes in or around swimming pools, lakes, or beaches when such devices are easily recognizable as not being designed or intended for use as lifesaving devices.

(l) **Penalty.** Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1968, p. 487, § 10; Ga. L. 1973, p. 1427, § 8; Ga. L. 1975, p. 773, § 1; Ga. L. 1976, p. 1632, §§ 2, 3; Ga. L. 1977, p. 1182, §§ 4-6; Ga. L. 1978, p. 1743, § 2; Ga. L. 1982, p. 3, § 52; Ga. L. 1984, p. 1203, § 1; Ga. L. 1985, p. 149, § 52; Ga. L. 1987, p. 567, § 6; Ga. L. 1992, p. 2075, § 1; Ga. L. 1994, p. 680, § 2; Ga. L. 1996, p. 326, § 1; Ga. L. 1996, p. 1273, § 1; Ga. L. 2001, p. 1000, § 1; Ga. L. 2003, p. 481, § 2; Ga. L. 2012, p. 775, § 52/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, deleted the last sentence of subsection (k), which read: "Any person who violates this Code section shall be guilty of a misdemeanor."

52-7-26. Penalty.

Except as otherwise provided in this article, any person who violates this article or any rule or regulation promulgated hereunder shall be guilty of a misdemeanor. For purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this article, the term "rules and regulations" shall mean those rules and regulations of the Board of Natural Resources in force and effect on January 1, 2012. (Ga. L. 1960, p. 235, § 13; Ga. L. 1968, p. 487, § 12; Ga. L. 1973, p. 1427, § 25; Ga. L. 1983, p. 3, § 41; Ga. L. 1995, p. 236, § 3; Ga. L. 2012, p. 739, § 29/HB 869.)

The 2012 amendment, effective May 1, 2012, added the last sentence in this Code section.

ARTICLE 2

DISPLAYING OF WATERCRAFT INFORMATION

52-7-51. Penalty.

(a) Any person who violates this article or any rules and regulations issued hereunder shall be guilty of a misdemeanor. For purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this article, the term “rules and regulations” shall mean those rules and regulations of the Board of Natural Resources in force and effect on January 1, 2012.

(b) Failure to affix a proper capacity plate shall constitute a separate violation for each watercraft with respect to which such failure occurs. (Ga. L. 1971, p. 419, § 12; Ga. L. 2012, p. 739, § 30/HB 869.)

The 2012 amendment, effective May 1, 2012, added the last sentence in subsection (a).

TITLE 53

WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1

IN GENERAL

53-1-5. Right of individual who feloniously and intentionally kills or conspires to kill to inherit.

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GENERAL CONSIDERATION

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Law reviews. — For comment, “Un- wrapping Escheat: Unclaimed Property Laws and Gift Cards,” see 60 Emory L. J. 971 (2011).

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53-3-1. Preference and entitlement.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION GENERALLY

1. IN GENERAL

General Consideration

Cited in Cabrel v. Lum, 289 Ga. 233, 710 S.E.2d 810 (2011).

Application Generally

1. In General

Denial of spouse's petition for year's support improper. — Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983,

Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In re Payam Mahmoodzadeh, 314 Ga. App. 383, No. A11A2314, 2012 Ga. App. LEXIS 201 (2012).

53-3-5. Filing of petition.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION GENERALLY

1. IN GENERAL

General Consideration

Cited in Cabrel v. Lum, 289 Ga. 233, 710 S.E.2d 810 (2011).

Application Generally

1. In General

Denial of spouse's petition for year's support improper. — Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the

widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was

contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In re Payam Mahmoodzadeh, 314 Ga. App. 383, No. A11A2314, 2012 Ga. App. LEXIS 201 (2012).

53-3-6. Issuance of citation and publication of notice; mailing of petition to tax commissioner.

JUDICIAL DECISIONS

Year’s support.

Probate court erred by allowing the objections of a bank and a decedent’s parents solely on the basis of adverse title and by denying a year’s support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; de-

spite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow’s support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In re Payam Mahmoodzadeh, 314 Ga. App. 383, No. A11A2314, 2012 Ga. App. LEXIS 201 (2012).

53-3-7. Hearing and determination.

JUDICIAL DECISIONS

Denial of spouse’s petition for year’s support improper. — Probate court erred by allowing the objections of a bank and a decedent’s parents solely on the basis of adverse title and by denying a year’s support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the

jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow’s support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In re Payam Mahmoodzadeh, 314 Ga. App. 383, No. A11A2314, 2012 Ga. App. LEXIS 201 (2012).

53-3-19. Conveyance or encumbrance by surviving spouse of property set aside; effect.

JUDICIAL DECISIONS

Interest in year’s support property. — Trial court did not err in refusing to set aside as void any sale of year’s support property by a mother because the question of the extent of the daughters’ interests in the year’s support property was resolved

in a partitioning judgment, which awarded the daughters their share of the year’s support property; because the partitioning judgment was not appealed, the daughters could not complain that the daughters had a greater interest in the

property than that which was awarded. Cabrel v. Lum, 289 Ga. 233, 710 S.E.2d 810 (2011).

53-3-20. Conveyance or encumbrance by surviving spouse of property set aside; approval of probate court.

JUDICIAL DECISIONS

Interest in year’s support property. — Trial court did not err in refusing to set aside as void any sale of year’s support property by a mother because the question of the extent of daughters’ interests in the year’s support property was resolved in a partitioning judgment, which awarded the daughters their share of the year’s

support property; because the partitioning judgment was not appealed, the daughters could not complain that the daughters had a greater interest in the property than that which was awarded. Cabrel v. Lum, 289 Ga. 233, 710 S.E.2d 810 (2011).

CHAPTER 4

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GENERAL PROVISIONS

53-4-1. Power of testator.

JUDICIAL DECISIONS

Application of pre-1998 probate code. — Trial court did not err when the court applied the law in place before the 1998 probate code was adopted to determine whether a husband and wife had a contract not to revoke their joint and mutual will because the issue was not the propriety of the devises in the will but

whether the husband and wife had a contract not to revoke the will; the 1998 probate code only applies to contracts entered into on or after January 1, 1998 (O.C.G.A. § 53-1-1), so it would not apply to any contract allegedly made in 1980. Davis v. Parris, 289 Ga. 201, 710 S.E.2d 757 (2011).

53-4-2. When will takes effect.

JUDICIAL DECISIONS

Application of pre-1998 probate code. — Trial court did not err when the court applied the law in place before the 1998 probate code was adopted to determine whether a husband and wife had a contract not to revoke their joint and

mutual will because the issue was not the propriety of the devises in the will but whether the husband and wife had a contract not to revoke the will; the 1998 probate code only applies to contracts entered into on or after January 1, 1998

(O.C.G.A. § 53-1-1), so it would not apply to any contract allegedly made in 1980. *Davis v. Parris*, 289 Ga. 201, 710 S.E.2d 757 (2011).

ARTICLE 4
JOINT OR MUTUAL WILLS

53-4-30. Contract concerning succession.

JUDICIAL DECISIONS

No express written contract found.
Decedent's son, grandson, and friend did not prove a written will contract meeting the requirements of O.C.G.A. § 53-4-30 because handwritten memorandum discovered after the decedent's death did not reflect the consideration the son, grandson, and friend described as part of the will contract and did not embody any promise on the decedent's part, but the notes simply stated the decedent's wishes as to the disposal of property and the handling of the estate; the signature is, in fact, a mandatory statutory requirement under O.C.G.A. § 53-4-30. *Newton v. Lawson*, 313 Ga. App. 29, 720 S.E.2d 353 (2011).

Decedent's son, grandson, and friend did not prove a written will contract meeting the requirements of O.C.G.A. § 53-4-30 because the decedent's 2000 will could not be relied upon to satisfy O.C.G.A. § 53-4-30 since it was not a written contract promising to make a will for valuable consideration and was revoked upon the decedent's execution of a will in 2004; the 2000 will was a revocable will reflecting the decedent's testamentary intent at the time the decedent executed the will, and the decedent changed the testamentary intent when the decedent executed the 2004 will. *Newton v. Lawson*, 313 Ga. App. 29, 720 S.E.2d 353 (2011).

53-4-31. Definitions.

JUDICIAL DECISIONS

ANALYSIS

MUTUAL WILLS

Mutual Wills

Joint and mutual will. — Trial court did not err when the court concluded that the will of a husband and wife was joint, and mutual and that the husband and wife had an enforceable contract not to revoke that will because the husband and wife each agreed to give the other certain described real and personal property as valuable consideration if one or the other survived, and they also agreed that if they

died simultaneously, or at the survivor's death, that the residue of the estate would go to their four children, all of whom were biologically the husband's children and two of whom were biologically the wife's children; when the husband died the wife, as the survivor, benefitted from the joint and mutual will when she probated it as the husband's last will and testament and conveyed the husband's entire estate to herself. *Davis v. Parris*, 289 Ga. 201, 710 S.E.2d 757 (2011).

ARTICLE 6

CONSTRUCTION OF WILL; TESTAMENTARY GIFTS

53-4-64. **Death of beneficiary before will executed or before death of testator.**

Law reviews. — For note, “Vesting Title in a Murderer: Where is the Equity in the Georgia Supreme Court’s Interpretation of the Slayer Statute in Levenson?” see 45 Ga. L. Rev. 877 (2011).

CHAPTER 5

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FOREIGN AND OUT-OF-STATE WILLS; NONDOMICILIARIES

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53-5-33. **(Effective January 1, 2013. See note.) Requisites for admission to ancillary probate.**

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

53-5-35. **(Effective January 1, 2013. See note.) Muniments of title to realty.**

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

PART 2

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53-5-43. **(Effective January 1, 2013. See note.) Evidence of authority.**

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

CHAPTER 6
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53-6-2. Executor de son tort.

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Alteration of compensatory award after appeal. — Trial court erred when the court altered the award to the decedent’s estate of compensatory damages, under O.C.G.A. § 53-6-2, after the executor’s unsuccessful first appeal. In re Estate of Tapley, 312 Ga. App. 234, 718 S.E.2d 92 (2011).

CHAPTER 7
ADMINISTRATION OF ESTATES GENERALLY

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53-7-30. Filing and contents.

JUDICIAL DECISIONS

Exemption from filing inventory. — Because an estate’s executors were exempted by the terms of the testator’s will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors were not unaccountable for injury based on the exemption. In re Estate of Willis, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

53-7-33. Power of testator to dispense with making inventory.

JUDICIAL DECISIONS

Statute did not provide cause of action to creditor of the estate. — Because an estate’s executors were exempted by the terms of the testator’s will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors

were not unaccountable for injury based on the exemption. In re Estate of Willis, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

ARTICLE 6

SETTLEMENT OF ACCOUNTS

PART 2

ANNUAL RETURNS AND INTERMEDIATE REPORTS

53-7-69. Power of testator to dispense with necessity of return.

JUDICIAL DECISIONS

Statute did not provide cause of action to creditor of the estate. — Because an estate's executors were exempted by the terms of the testator's will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file

such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors were not unaccountable for injury based on the exemption. In re Estate of Willis, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

CHAPTER 11

PROCEEDINGS IN PROBATE COURT

53-11-11. (Effective January 1, 2013. See note.) Authentication or exemplification of document.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

CHAPTER 12

TRUSTS

ARTICLE 2

CREATION AND VALIDITY OF EXPRESS TRUSTS

53-12-20. Express trusts.

JUDICIAL DECISIONS

Cited in *Rector v. Bishop of the Episcopal Diocese of Ga., Inc.*, 290 Ga. 95, 718 S.E.2d 237 (2011); *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272, 719 S.E.2d 446 (2011).

53-12-25. Transfer of property to trust.

JUDICIAL DECISIONS

Wrongful death claim did not comprise the res of a technical trust. — Creditors’ 11 U.S.C. § 523(a)(4) claim against a Chapter 13 debtor, their attorney, was dismissed because although the attorney failed to file a wrongful death complaint on the creditors’ behalf and represented to the creditors that the attorney had, the creditors failed to allege a contract or other agreement establishing a technical trust. The creditors’ wrongful death cause of action did not comprise the res of a technical trust because under O.C.G.A. § 53-12-25 only property subject to transfer by the settler could become the subject matter of a trust, and under O.C.G.A. § 44-12-24 the creditors’ wrongful death action was non-transferable. *Crisler v. Farr (In re Farr)*, No. 11-1009, 2011 Bankr. LEXIS 1875 (Bankr. M.D. Ga. May 18, 2011).

ARTICLE 5

SPENDTHRIFT PROVISIONS AND CREDITORS’ RIGHTS AND CLAIMS

53-12-80. Spendthrift provisions.

JUDICIAL DECISIONS

Relationship to bankruptcy. — In a case in which the issue was whether the campaign funds of the debtor, a candidate for public office who filed for Chapter 13 bankruptcy without incorporating the campaign, were the property of the bankruptcy estate, the spendthrift trust exception to the anti-alienation provision in 11 U.S.C. § 541(c)(1)(A) did not apply because the campaign funds were not held in a spendthrift trust under Georgia law. There was no evidence of a writing creating an express trust, let alone an express trust containing a valid spendthrift provision as required under O.C.G.A. § 53-12-80. *In re Chambers*, 451 B.R. 621 (Bankr. N.D. Ga. 2011).

ARTICLE 7

IMPLIED TRUSTS

53-12-130. Resulting trusts.

JUDICIAL DECISIONS

Insufficient evidence of a resulting trust.

Best interest of creditors' test under 11 U.S.C. § 1325(a)(4) was not met by the proposed plan of Chapter 13 debtors because the plan did not account for the recoverable value of the debtor's transfer of the debtor's interest in property given to the debtor by the debtor's mother. A resulting trust under O.C.G.A.

§ 53-12-130(1) in favor of the mother was not created based on the nature of her transaction and the conduct of the parties, and a purchase money resulting trust under § 53-12-130(3) did not arise because the transfer from the mother to the brothers was made without consideration. *Meredith v. Weigl (In re Weigl)*, No. 10-60341, 2011 Bankr. LEXIS 2246 (Bankr. S.D. Ga. Jan. 18, 2011).

53-12-132. Constructive trusts.

JUDICIAL DECISIONS

Inordinate delay.

Former wife was not entitled to impose a constructive trust on her former husband's military pension pursuant to O.C.G.A. § 53-12-132 because she failed to object to the absence of any provision

for the pension in their divorce decree for 12 years and failed to bring suit until five years after payments allegedly became due. *Davis v. Davis*, 310 Ga. App. 512, 713 S.E.2d 694 (2011).

ARTICLE 14

TRUSTEE LIABILITY

53-12-300. Accountable to beneficiary; breach of trust.

JUDICIAL DECISIONS

Trustee properly found to have breached fiduciary duty. — It was not an abuse of discretion to deny a new trial motion brought by a trustee who was found to have breached the trustee's fiduciary duty to trust beneficiaries by making distributions to a co-trustee under a trust's encroachment provision because the trustee breached the trustee's duty to

protect the trust corpus as: (1) the trustee inconsistently required the co-trustee to provide supporting evidence for corpus distributions and let the co-trustee exceed an allotted budget; and (2) the beneficiaries were damaged by the resulting reduction in trust corpus. *Reliance Trust Co. v. Candler*, No. A11A1807, 2012 Ga. App. LEXIS 336 (Mar. 26, 2012).

53-12-302. Damages for breach of trust; interest.**JUDICIAL DECISIONS**

Interest. — It was not error to award trust beneficiaries interest from the date of encroachment for trustee's breach of the trustee's fiduciary duty to the beneficiaries under a trust's encroachment provision by making distributions to a co-trustee, because: (1) O.C.G.A.

§ 53-12-302(a)(1) and (3) said the trustee was liable for interest; and (2) under O.C.G.A. § 53-12-302(b), a trustee was liable for interest from the date of a breach. *Reliance Trust Co. v. Candler*, No. A11A1807, 2012 Ga. App. LEXIS 336 (Mar. 26, 2012).

